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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/551,973	04/14/2000	Barbara Westfield	830053.410	2231

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/551,973

Applicant(s)

WESTFIELD, BARBARA

Examiner

Drew E Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Request for Continued Examination*

1. The request filed on April 24, 2003 for an RCE based on parent Application No. 09/551,973 is acceptable and an RCE has been established. An action on the RCE follows.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 6-8, 10, and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Pollock [Pat. No. 2,251,600].

Pollock teaches a bread baking device comprising a housing with a baking chamber (Figure 1, #12), a frame (Figure 1, #5), the frame having two sidewalls and a base member (Figure 1, #13 & 20), vertically-spaced removable trays with holes (Figure 1, #21-22), the frame having an opening large enough to place and remove the trays (Figure 1), and a handle (Figure 1, #16). Phrases such as "for an automatic bread baking machine" are merely preferred methods of using the claimed apparatus, and as such are not given patentable weight.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, and 5-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollock in view of Harrison [Pat. No. 5,588,352].

Pollock teaches a bread baking device comprising a housing with a baking chamber (Figure 1, #12), a frame (Figure 1, #5), the frame having two sidewalls and a base member (Figure 1, #13 & 20), vertically-spaced removable trays with holes (Figure 1, #21-22), the frame having an opening large enough to place and remove the trays (Figure 1), and a handle (Figure 1, #16). Pollock does not teach a coupling device located in a bottom region of the chamber which engages the base. Harrison teaches an automatic bread making machine comprising a frame with a foraminous, removable tray and base (Figure 3, #36 & 38) and a coupling device located in a bottom region of the chamber which engages the base (Figure 8, #134). It would have been obvious to one of ordinary skill in the art to incorporate the coupling device of Harrison into the invention of Pollock since both are directed to bread making devices, since Pollock already included a frame with a base (Figure 1, #5 & 20) which had to be lowered and raised vertically, and since the coupling device of Harrison permitted the automatic raising and lowering of the frame without the need for an operator to reach into the device and thereby risk being burnt or injured.

Art Unit: 1761

5. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison in view of Pollock.

Harrison teaches a method of baking dough by placing ingredients into an automatic bread making machine (column 5, lines 41-44), activating a motor to mix the ingredients (column 5, line 45), removing the dough from the machine (column 5, line 48), dividing the dough into portions (column 5, line 50), placing the formed dough portions onto a tray of a frame and inserting the frame into a baking chamber (column 6, line 31), the base engaging a coupling device (Figure 8, #134), activating a heating element to bake the dough (column 6, line 45), and removing the baked dough (column 6, line 57).

Harrison does not teach a frame with plural removable trays, and opposing sidewalls with openings. Pollock teaches a bread baking device comprising a housing with a baking chamber (Figure 1, #12), a frame (Figure 1, #5), the frame having two sidewalls and a base member (Figure 1, #13 & 20), vertically-spaced removable trays with holes (Figure 1, #21-22), the frame having an opening large enough to place and remove the trays (Figure 1), and a handle (Figure 1, #16). It would have been obvious to one of ordinary skill in the art to incorporate the frame structure of Pollock into the invention of Harrison since both are directed to bread making methods, since Harrison already included a frame with a tray and base (Figure 3, #36 & 38), and since the plural trays and sidewalls of Pollock would have provided greater flexibility in the baking process by permitting the simultaneous baking of different types and sizes of dough portions on different trays which could be removed at different times.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1-3 and 5-21 have been considered but are moot in view of the new ground(s) of rejection.

Regarding the Pollock reference, applicant argues that it "is not directed to bread baking methods and does not teach the use of a baking rack for baking devices generally". However, Pollock is specifically titled as "BAKING APPLIANCE", specifically recites "This invention relates to a baking appliance, more particularly to a baking rack" (column 1, line 1), and specifically illustrates a baking device with a baking rack (Figure 1).

Phrases such as "for an automatic bread baking machine" are merely preferred methods of using the claimed apparatus, and as such are not given patentable weight. Intended use has been continuously held not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530. The manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself, *In re Casey*, 152 USPQ 235. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, *Ex parte Masham*, 2 USPQ2d 1647. The purpose to which an apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, *Ex parte Thibault*, 164 USPQ 666.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

  
Drew E Becker  
Examiner  
Art Unit 1761

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May 14, 2003